Supreme Court U.S.
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No. 02-481

In The

Supreme Court of the United States

RONALD BRADLEY,

Petitioner,

v.

MONARCH CONSTRUCTION, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Petitioner, Ronald Bradley, has filed a Petition for Writ of Certiorari to the United States Supreme Court. He seeks an order vacating the action of the United States Court of Appeals for the Eighth Circuit affirming the grant of judgment as a matter of law issued and filed on August 30, 2001 by the United States District Court for the District of Nebraska, the Honorable Robert Pratt, United States District Judge for the Southern District of Iowa, sitting by designation.

The civil action commenced by Petitioner in the District Court sought damages for an alleged violation of the Americans With Disabilities Act, 42 U.S.C. §§ 12101-12213 ("ADA") and the Nebraska Fair Employment Practices Act, § 48-1111 et seq. of the Revised Statutes of Nebraska ("NFEPA").

After a trial before a jury, the District Court granted a motion for judgment as a matter of law pursuant to Federal Rules of Civil Procedure 50(a). That ruling was based upon the determination of the District Court that Petitioner had failed to meet his burden of proof that Respondent was an "employer" within the definition contained in the ADA and NFEPA.

Supreme Court Rule 10 provides guidance as to the matters considered in ruling upon a petition for certiorari. Certiorari is not a matter of right and will be granted by the Supreme Court only for compelling reasons. None of the reasons given as examples in Supreme Court Rule 10 are applicable in this case. There is not a conflict in decisions between the United States Courts of Appeals, nor is there a conflict in decisions between the Nebraska Supreme Court or a United States Court of Appeals on this

issue. This civil action does not involve an important question of federal law that has either not been decided by the Supreme Court or has been decided in conflict with prior decisions of the Supreme Court. The question of law at issue, i.e., the manner in which it is ascertained whether an employer is a covered "employer" under the Civil Rights laws, has been decided by the Supreme Court in *Walters v. Metropolitan Educational Enterprises, Inc.*, 117 S.Ct. 660 (1997) and was properly applied by both the District Court and Court of Appeals in this civil action.

A reading of the District Court opinion and order shows that the District Court found that:

a) to be an employer and subject to the requirements of the ADA and NFEPA, it was necessary that Petitioner prove that Respondent was an "employer" in that it had 15 or more "employees" for each working day in 20 or more weeks in the current or preceding calendar year;

b) the evidence submitted by Petitioner at trial did not indicate whether the numerosity requirement was met in each of the twenty weeks or more in the current or preceding calendar year or whether the individuals who were reflected on the payroll records were "employees" under traditional principles of agency law. (See *Walters, supra*);

c) there was no evidence presented by Petitioner on which a reasonable fact finder could find without pure speculation that Respondent had the requisite number of employees, or that the other purported related companies have the kind of interrelated

operations such that they could be considered a single employer; and

d) that, even if the companies were interrelated, Respondent presented uncontradicted evidence that persons who perform work for these entities are independent contractors and not employees.

Petitioner argues in his Petition for Writ of Certiorari that the District Court made errors with regard to factual determinations – not as to controlling law. The District Court correctly applied the controlling law of *Walters*, that "traditional principals of agency law" govern the numerosity of employees issue. The District Court found that, in applying this test, Petitioner had wholly failed to meet his evidentiary burden.

It is clear that Petitioner had the burden of proving that there were the requisite number of employees on each day of the required twenty weeks, that Petitioner failed to meet that evidentiary burden, and that the District Court acted correctly in entering judgment as a matter of law and the United States Court of Appeals for the Eighth Circuit acted properly in affirming that action, both in proceedings before the three-judge panel and *en banc*. As Supreme Court Rule 10 specifically states, "a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings."

This case is clearly not worthy of review on Certiorari under the requirements of Supreme Court Rule 10.

Respectfully submitted,

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